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vera.kublanov@philips.com
debbie.henn@philips.com
marianne.fox@philips.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WINFRIED ANTONIUS HENRICUS BERKVENS

Appeal 2009-011071
Application 10/597,969
Technology Center 2400

Before ROBERT E. NAPPI, CARLA M. KRIVAK, and CARL W.
WHITEHEAD JR., *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection
of claims 1 through 10.

We reverse.

INVENTION

The invention is directed to a system for distributing media content. See Specification 1. Claim 1 is representative of the invention and reproduced below:

1. A system for distributing a content, the system comprising:
 - a receiver for receiving the content, the receiver comprising:
 - a selector for selecting a distributor of the content out of a plurality of distributors;
 - content-requesting means for requesting the content from the distributor selected;
 - receiving means for receiving the content;
 - identity-determining means for determining an identity associated with the content; and
 - a verifier for verifying an availability of the content at the distributor based on the identity determined,
 - the distributor of the content, comprising:
 - content request-receiving means for receiving a request for the content; and
 - a dispatcher for dispatching the content,
 - wherein the distributor is arranged to dispatch the content to the receiver in response to receiving a request for the content from the receiver, and wherein the receiver is arranged to only select the distributor if the verifier verified the availability of the content at the distributor.

REFERENCES

Legout	EP 1 322 094 A1	Jun. 25, 2003
Kaufman	WO 01/91417 A2	Nov. 29, 2001

REJECTIONS AT ISSUE

The Examiner has rejected claims 1 through 4, 6, and 8 through 10 under 35 U.S.C. § 102(e) as being anticipated by Legout. Answer 3-9.¹

The Examiner has rejected claims 5 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Legout in view of Kaufman. Answer 9-12.

ISSUE

Appellant's contentions, on page 4 of the Brief, present us with the issue: did the Examiner err in finding that Legout teaches the client performs the functions of selecting a distributor, determining the identity of the content, and verifying the availability of the content?²³

ANALYSIS

Appellant's arguments have persuaded us that the Examiner erred in finding that Legout teaches the client performs the functions of selecting a distributor, determining the identity of the content, and verifying the

¹ Throughout this opinion we refer to the Examiner's Answer mailed on January 26, 2009.

² Throughout this opinion we refer to the Appeal Brief dated November 5, 2008, and Reply Brief dated April 23, 2009.

³ We note that Appellant's arguments present us with additional issues, however as this issue is dispositive of the case we do not reach the other issues.

availability of the content. Independent claims 1, 8, 9, and 10 recite a receiver which performs these functions. The Examiner finds that Legout teaches a client is a receiver. Answer 12. The Examiner, citing paragraph 68 of Legout, finds that the receiver includes a database which holds the stored content identifiers, thus meeting the identity determining means. Answer 12. The Examiner, citing paragraph 69, finds the client includes a process for verifying that the requested content is accessible. Answer 12. Further, the Examiner, citing to paragraph 4 of Legout, finds the client performs a process of selecting a server in a network of at least two servers. Answer 13.

We have reviewed the disclosure of Legout and do not find the evidence supports the Examiner's finding that all of these functions are performed at the client; rather it appears that some of these functions are associated with the redirecting server item 22 in figure 2 (*see also* paragraphs 34 and 35). Also, we note Legout's disclosure in paragraph 4, which the Examiner relies upon to teach selecting the server, is a description of another prior art system and not Legout's invention. Thus, we do not find the Examiner has shown that Legout discloses all of the limitations of Appellant's invention. Accordingly, we will not sustain the Examiner's anticipation rejection of claims 1 through 4, 6, and 8 through 10.

Claims 5 and 7 are ultimately dependent upon claim 1, and the Examiner's obviousness rejection of these claims also relies upon the disclosure of Legout teaching the limitations of claim 1. Accordingly, we will not sustain the Examiner's obviousness rejection of claims 5 and 7 for the same reasons as claim 1.

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CONCLUSION

Appellant has persuaded us of error in the Examiner's decision to reject claims 1 through 10.

ORDER

The decision of the Examiner rejecting claims 1 through 10 is reversed.

REVERSED